IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.06.2007

C O R A M :

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.A.No. 590 of 2007
and M.P.No.1 of 2007

Smt. K.M. Kalaiselvi Mohan ... Appellant/Petitioner

-vs-

1.The Commissioner
Hindu Religious and Charitable
Endowment Board,
Nungambakkam High Road
Chennai 600 034.

2.The Joint Commissioner
Hindu Religious and Charitable
Endowment Board
Near R.D.O. Office
Sathuvacheri Post
Vellore 9.

3.The Executive Officer
Arulmigu Sri Varadharaja Perumal Thirukoil
Old Katpadi, Katpadi
Vellore District. ... Respondents/Respondents ``

Writ Appeal filed under Clause 15 of Letters Patent against the order of the learned single Judge dated made in W.P.No.4020 of 2007 dated 05.02.2007.

Petition filed under Article 226 of theConstitution of India to issue a writ of certioarified Mandamus Call for the record in Na.Ka.No.33437/2006/Y3 dt 15.12.2006 passed by the 1st respondent, quash the same and further direct the respondents to permit the present Thiruppani Committee headed by the petitioner to complete the renovation work and perform the consecration of the Temple Arulmigu Varadharaja Perumal Thirukkoil, Old Katpadi, Katpadi, Vellore District.

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For appellant :: Mr. T.N. Rajagopalan
for Mr. V. Venkata Seshah

For respondents :: Mr. T. Chandrasekaran
Spl. Govt., Pleader for R.1 and 2.
Mr. M. Sundar for R.3.
..

JUDGMENT

(DELIVERED BY P.JYOTHIMANI,J.)

The writ appeal is directed against the order of the learned single Judge dated 05.02.2007 made in W.P.No.4020 of 2007, in and by which the writ petition filed by the appellant was disposed of, directing the petitioner to approach the Government under Section 114 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (in short, "the Act"), by filing appeal against the order of the first respondent, Commissioner, Hindu Religious and Charitable Endowments Board, Chennai, dated 15.12.2006. The first respondent, Commissioner, Hindu Religious and Charitable Endowments Board, has passed the said order, after conducting enquiry by dissolving the Thiruppani Committee of Arulmighu Sri Varadharaja Perumal Thirukoil, Old Katpadi, Vellore District headed by Mrs. Kalaiselvi Mohan, the appellant herein, by virtue of his powers under Rule 54 (4) of the Management and Preservation of Properties of Religious Institution Rules (in short, "the Rules") framed under Section 116 (2) of the Act.

2. As against the said order of the first respondent, Commissioner, Hindu Religious and Charitable Endowments Board, passed under Rule 54 (4) of the Rules stated above, the appellant has filed the writ petition stating that there is no appeal or revision provided against the impugned order of the first respondent. It is, while considering the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, especially with reference to Section 114, the learned single Judge has found that the remedy of appeal is available to the petitioner and in view of the said finding, has given a direction as stated above while disposing the writ petition.

3. The learned counsel for the appellant would submit that, for invoking the appellate power of the Government under Section 114 of the Act, it is possible only after filing an application before the Commissioner under Section 21 of the Act, which imposes a power on the Commissioner to call for the records and pass orders, in effect amounting to revision. To substantiate his contention he would also rely upon Section 114 (3) of the Act, which states as follows:

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"114 (3). No application to the Government for the exercise of their power under this section shall be made in respect of any matter unless an application had already been made in respect of the same matter to the Commissioner under section 21 and had been disposed of by him."

4. On the other hand, Section 114(1) of the Act categorically confers the powers of appeal to the Government by calling for the records of the Commissioner, Additional Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner. The said provision which runs as follows:

"Section 114. Power of Government to call for records and pass orders.-

(1) The Government may call for and examine the record of, [the Commissioner, (or the Additional Commissioner) or any Joint or Deputy or Assistant Commissioner] or of any trustee in respect of any proceeding, not being a proceeding, in respect of which a suit or an appeal or application to a Court or an appeal to the Government is provided by this Act, to satisfy themselves as to the regularity of such proceeding or the correctness, legality or proprity of any decision or order passed therein and if, in any case, it appears to the Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly:

Provided that the Government shall not pass any order prejudicial to any party unless he has had a reasonable opportunity of making his representations.

(2) The Government may stay the execution of any such decision or order, pending the exercise of their powers under sub-section (1) in respect thereof.

(3) No application to the Government for the exercise of their power under this section shall be made in respect of any matter unless an application had already been made in respect of the same matter to the Commissioner under section 21 and had been disposed of by him.

(4) Every application to the Government for the exercise of their power under this section shall be preferred within three months from the date on which the order of proceeding to which the application relates was communicated to the applicant. "

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5. A combined reading of the said provision, viz., Section 114 of the Act shows that, it is not, as if, in cases where the Commissioner himself passes an order, once again the matter has to be referred to him under Section 21 of the Act. Section 114 (3) of the Act would be made applicable only in cases where any other officer other than the Commissioner passes order. In the present case, the impugned order itself has been passed by the Commissioner, and therefore, there is no substance in the contention raised by the learned counsel for the appellant that application has to be moved before the Commissioner under Section 21 of the Act, and thereafter, file appeal to the Government under Section 114. In view of the same, we are not inclined to interfere with the order passed by the learned single Judge. However, the appellant is free to file appeal as directed by the learned single Judge, within a period of four weeks from today.

The writ appeal is disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Kh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Commissioner
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3.The Executive Officer
  Arulmigu Sri Varadharaja Perumal Thirukoil
  Old Katpadi, Katpadi
  Vellore District.

+ one cc to Mr. M. Sundar Advocate sr no. 31808
+ one cc to the Governemnt Pleader sr no. 31804

nsm(co)
nm(11.06.07)

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